

RULEMAKING NOTICE FORM

Notice Number 2009-30Rule Number He-M 521

1. Agency Name & Address:

**Department of Health and Human Services
Bureau of Developmental Services
129 Pleasant St, Brown Bldg
Concord, NH 03301**

2. RSA Authority:

**RSA 171-A:3; 18, IV;
137-K:3**

3. Federal Authority:

4. Type of Action:

Adoption

X

Amendment

Repeal

Readoption

Readoption w/amendment

X

5. Short Title: **Certification of Residential Services , Combined Residential and Day Services or Day Services Provided in the Family Home**

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

- He-M 521 provides minimum standards for residential services, combined day and residential services, and day services for individuals with developmental disabilities or acquired brain disorders who reside in their families homes.
- The proposed changes to He-M 521 align this rule with other newly adopted or readopted rules by the Bureau of Developmental Services. Additions include an appeals section and a payment section. A new provision is that payment cannot be made to a person under age 18, if the individual is 21 years or older. Certification will now typically occur biennially rather than annually. Although not a new requirement, recovery of the cost of care for certain individuals is newly included in these rules. Reference to Nur 404 was added to cover situations where non-family providers who are not area agency staff are asked to administer medications.

6. (b) Brief description of the groups affected:

- He-M 521 relates to individuals with developmental disabilities or acquired brain disorders who reside in their families' homes. These rules do not apply to individuals who receive services under He-M 524, in-home supports.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Number	RSA/Federal Citation
He-M 521.01 - 521.14	RSA 171-A:4; 18; I and II

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Maya Blanchette**Title: **Rules Coordinator**

Address: **Office of Program Support
Brown Building
129 Pleasant Street
Concord, NH 03301**

Phone #: **271-4190**Fax#: **271-5590**E-mail: **maya.blanchette@dhhs.state.nh.us**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.state.nh.us/DHHS/ADMINRULEMAKING/default.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Friday, April 24, 2009**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, April 14, 2009, at 11 AM**

Place: **Brown Bldg, Room 288 DHHS, 129 Pleasant St., Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **09:025** , dated **2/27/09**

Fiscal Impact Statement for rules related to criteria for requesting an

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact of state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s): There are no costs or benefits attributable to the proposed rules.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution: **The proposed rule does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.**

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BUREAU OF DEVELOPMENTAL SERVICES
HUGH J. GALLEN STATE OFFICE PARK
105 PLEASANT STREET
CONCORD, NEW HAMPSHIRE 03301

Part He-M 521 CERTIFICATION OF RESIDENTIAL SERVICES, COMBINED RESIDENTIAL AND
DAY SERVICES, OR ~~SELF-DIRECTED~~ DAY SERVICES PROVIDED IN THE FAMILY
HOME

Statutory Authority: RSA 171-A:3; 18, IV; 137-K:3

Readopt with amendment He-M 521.01, effective 10/27/07 (document #9013), to read as follows:

He-M 521.01 Purpose. The purpose of these rules is to ~~establish~~provide minimum standards for residential services, combined day and residential services or ~~self-directed~~ day services for individuals with developmental disabilities or acquired brain disorders who reside in their families' homes. These rules shall not apply to individuals who receive services under He-M 524, in-home supports.

Readopt with amendment He-M 521.02, effective 5/22/01 (document #7494), as amended effective 10/27/07 (document # 9013), to read as follows:

He-M 521.02 Definitions.

(a) "Acquired brain disorder" means a disruption in brain functioning that:

- (1) Is not congenital or caused by birth trauma;
- (2) Presents a severe and life-long disabling condition which significantly impairs a person's ability to function in society;
- (3) Occurs prior to age 60; and
- (4) Is attributable to one or more of the following reasons:

a. External trauma to the brain as a result of:

1. A motor vehicle incident;
2. A fall;
3. An assault; or
4. Another related traumatic incident or occurrence;

b. Anoxic or hypoxic injury to the brain such as from:

1. Cardiopulmonary arrest;
2. Carbon monoxide poisoning;
3. Airway obstruction;
4. Hemorrhage; or
5. Near drowning;

- c. Infectious diseases, such as encephalitis and meningitis;
- d. Brain tumor;
- e. Intracranial surgery;
- f. Cerebrovascular disruption such as a stroke;
- g. Toxic exposure; and
- h. Other neurological disorders such as Huntington's disease or multiple sclerosis which predominantly affect the central nervous system; and

(5) Is manifested by:

- a. Significant decline in cognitive functioning and ability; and/or
- b. Deterioration in:
 - 1. Personality;
 - 2. Impulse control;
 - 3. Judgment;
 - 4. Modulation of mood; or
 - 5. Awareness of deficits.

~~(b) "Administer" means an act whereby a single dose of a drug is instilled into the body of, applied to the body of, or otherwise given to a person for immediate consumption or use.~~

~~(be)~~ "Area agency" means "area agency" as defined under RSA 171-A:2, I-b, namely, "an entity established as a nonprofit corporation in the state of New Hampshire which is established by rules adopted by the commissioner to provide services to developmentally disabled persons in the area."

~~(c) "Bureau" means the bureau of developmental services of the department of health and human services.~~

~~(d) "Bureau administrator" means the chief administrator of the bureau of developmental services.~~

~~(ed)~~ "Commissioner" means the commissioner of the department of health and human services or his or her designee.

~~(f) "Day services" means services that include supports for individuals to participate in community activities such as volunteer work, paid employment or recreation.~~

~~(ge)~~ "Department" means the department of health and human services.

~~(hf)~~ "Developmental disability" means "developmental disability" as defined under RSA 171-A:2, V.

~~(g) "Director" means the director of the division of developmental services.~~

~~(h) “Division” means the division of developmental services of the department of health and human services.~~

(i) “Family” means a group of 2 or more persons related by ancestry, marriage, or other legal arrangement that has at least one member who has a developmental disability.

(j) “Guardian” means a person appointed pursuant to RSA 464-A or the parent of an individual under the age of 18 whose parental rights have not been terminated or limited by law.

(k) “Individual” means a person with a developmental disability or acquired brain disorder who is eligible to receive services pursuant to He-M 503.03 or He-M 522.03.

(l) “Provider” means a person receiving any form of remuneration for the provision of ~~who has a contract with an area agency, provider agency, individual, or family to deliver~~ services to an individual.

~~—— (m) “Provider agency” means an area agency, or an entity under contract with an area agency, that is responsible for services to individuals.~~

(m) “Representative” means:

(1) The parent or guardian of an individual under the age of 18;

(2) The legal guardian of an individual 18 or over; or

(3) A person who has power of attorney for the individual.

~~—— (n) “Self directed services” means a service arrangement whereby the individual, or guardian if applicable, designs the services, selects the service providers, and decides how the authorized funding is to be spent based on the needs identified in the individual’s service agreement.~~

~~—— (o) “Self directed day services” means self directed services as defined in (n) above that include supports for individuals to participate in community activities such as volunteer work, paid employment or recreation.~~

~~(np)~~ “Service” means any paid assistance to an individual provided through the area agency.

~~(oq)~~ “Service agreement” means a written agreement between an individual or guardian and an area agency that describes the services that an individual will receive and constitutes an individual service plan as defined in RSA 171-A.

~~(pr)~~ “Service coordinator” means a person who is chosen or approved by an individual ~~or~~ and, if applicable, his or her guardian representative and designated by ~~an~~ the area agency to organize, facilitate, and document service planning and to negotiate and monitor the provision of the individual’s ~~services~~ services and who is:

(1) An area agency service coordinator, family support coordinator, or any other area agency or subcontract agency;

(2) A member of the individual’s family;

(3) A friend of the individual; or

(4) Any other person chosen by the individual.

~~(qs) “Staff” means an employee of an area agency, provider agency, or family, who provides direct services to an individual; a person employed by an area agency or subcontract agency.~~

~~—— (t) “Subcontractor” means a family or a provider agency other than an area agency that establishes a contract with an area agency and thereby assumes identified responsibilities for services for specific individual(s).~~

(r) “Subcontract agency” means an entity that is under contract with any area agency to provide services to individuals who have a developmental disability or acquired brain disorder.

Readopt with amendment He-M 521.03 through He-M 521.04, effective 5/22/01 (document #7494), to read as follows:

He-M 521.03 Services.

(a) All services shall be specifically tailored to the competencies, interests, preferences, needs, and lifestyle of the individual served.

(b) Services shall include assistance and/or instruction to improve and maintain an individual’s skills in basic daily living, personal development, and community activities, such as but not limited to:

- (1) Making personal choices;
- (2) Promoting and maintaining safety;
- (3) Enhancing communication;
- (4) Participating in community activities;
- (5) Developing and maintaining personal relationships;
- (6) Finding and maintaining employment;
- (7) Pursuing avocations in areas of personal interest;
- (8) Improving and maintaining social skills;
- (9) Achieving and maintaining physical well-being;
- (10) Improving and/or maintaining mobility and physical functioning;
- (11) Shopping and managing money;
- (12) Attending to personal hygiene and appearance;
- (13) Doing household chores;
- (14) Participating in meal preparation;

- (15) Accessing and/or using assistive technology;
- (16) Accessing and using transportation; and/or
- (17) Other similar services as indicated in the individual's service agreement.

He-M 521.04 Eligibility.

(a) Any individual who resides at home with his or her family shall be eligible for services identified in He-M 521.03, except as provided in (b) below.

(b) An individual who resides in a foster home licensed by the division of children, youth, and families shall not be eligible for services identified in He-M 521.03.

~~(c) A person shall not be eligible to receive payment for providing services under He-M 521 if he or she:~~

~~(1) Is the parent of the individual under the age of 18; or~~

~~(2) Is the spouse of the individual.~~

Readopt with amendment He-M 521.05, effective 5-22-01 (document # 7494), as amended effective 10/27/07 (document #9013), to read as follows:

He-M 521.05 Administrative Requirements.

(a) Once a family expresses interest regarding He-M 521 services but before ~~residential services, combined residential and day services, or self-directed day~~ services are provided under He-M 521, the area agency shall:

(1) Insure that the proposed service arrangement:

- a. Meets the individual's expressed interests, preferences, needs, and lifestyle;
- b. Is consistent with the goals and services identified in the individual's service agreement; and
- c. Meets the individual's environmental and personal safety needs; and

(2) Explain ~~the requirements of He-M 521~~ and discuss the following with the individual, guardian and family members:

- a. Area agency oversight of services provided under He-M 521;
- b. If applicable, the process of having staff ~~and/or~~ providers coming into the home environment;
- c. If the individual is taking medication, the supports available or needed to administer the medication safely;
- d. That modifications might be necessary in the service agreement if and when the individual's needs or preferences change;
- e. If applicable, receiving payments for the provision of services;
- f. If applicable, the relationship between the area agency and the family member as a ~~n~~ employee, provider ~~and/or~~ subcontractor;

g. The requirements regarding certification of services, including performing criminal background checks on all people who are being considered for a position of staff or provider; and

h. The conditions warranting the suspension or revocation of certification; and

i. Any self-directed services arrangement, as applicable, including reporting mechanisms regarding budget updates.

(b) In those situations where a family member is to be reimbursed as a provider and/or subcontractor, the area agency/provider or subcontract agency shall, in consultation with the individual, guardian, and family, develop a contract that:

(21) Identifies the responsibilities of the area agency, /sub-contracts subcontract agency, and of if applicable, and the family member as a provider or subcontractor;

(32) Including Describes provision of supports needed to administer medication safely;

(43) Includes provision for time off and identifying the area agency or subcontract agency responsibility in assisting the family to secure substitute providers when the family member is the provider;

(54) Includes a provision for either party to dissolve the contract with notice;

(65) That a Allows for review and revision as deemed necessary by either party; and

(76) That it is signed by all parties.

(c) After the signing of the contract pursuant to He-M 521.05(b), the When services are being provided under He-M 521, the area agency shall:

(1) Have, at a minimum, quarterly contacts with the family to provide information and support to ensure that services are provided in accordance with the service agreement and He-M 521; and

(2) Ensure that the service arrangement is in compliance with He-M 506.03, and He-M 506.05 (a)- (c) He-M 1201, insofar as is required by and He-M 521.06.

Readopt with amendment He-M 521.06 through He-M 521.07, effective 5/22/01 (document # 7494), to read as follows:

He-M 521.06 Medication Administration. When an individual living with his or her family is in need of medication administration, staff and providers, excluding providers who are family members, shall be trained and authorized by a nurse-trainer pursuant to He-M 1201.04 if they are to administer medication, such administration shall:

(a) Comply with He-M 1201 when administered by area agency or subcontract agency staff, or home providers;

(b) Comply with Nur 404 when administered by providers who are neither family members nor under contract with an area agency or subcontract agency, except in situations where the individuals are living with their families and receiving respite arranged by the family; or

(c) When performed by family members paid under He-M 521, include discussion between the area agency or subcontract agency and the family about any concerns the family might have regarding medication administration.

He-M 521.07 Quality Assessment. An area agency shall monitor services provided pursuant to He-M 521 as follows:

(a) On at least a monthly basis, the service coordinator shall visit or have verbal contact with the individual or persons responsible for services to review progress on achieving the goals in the service agreement and to inquire about other service needs and document ~~the~~such visit ~~or~~ contact;.

(b) The service coordinator or a designated area agency staff shall visit the individual at home and contact the guardian, if any, at least quarterly, or more frequently if so specified in the individual's service agreement, to determine and document whether services:

- (1) Match the interests, needs, preferences and lifestyle of the individual;
- (2) Meet with the individual's satisfaction;
- (3) Meet the individual's environmental and personal safety needs; and
- (4) Meet the terms of the service agreement; and

(c) If applicable, ~~pursuant to He-M 1201.11(b)~~, a prescribing practitioner or registered nurse shall review medication administration related activities according to He-M 1201.08 (b)(1) at least semi-annually.

Readopt with amendment He-M 521.08, effective 10/27/07 (document #9013), to read as follows:

He-M 521.08 Documentation.

~~(a) The provider or staff shall document dates services are provided.~~

~~(b)~~ Individual records shall:

~~(1a)~~ Be maintained by the provider or staff; and

~~(2b)~~ Include:

~~a.~~(1) The service agreement;

~~b.~~(2) Provider or staff progress notes written at least monthly, or more frequently if so specified in the service agreement, including the dates services are provided and reports on progress toward achieving desired outcomes;

~~e. The individual's routine for day services or self directed day services; and~~

(3) For day services, a weekly personal schedule or calendar that:

a. Identifies the days, times, and locations of the individual's community activities such as recreation or paid or volunteer work; or

b. Includes brief, daily notations that document responses to people and activities and any changes in the individual's schedule; and

~~d.~~(4) Any other documentation required by the area agency.

Readopt with amendment He-M 521.09, effective 5/22/01 (document # 7494), as amended effective 10/27/07 (document #9013), to read as follows:

He-M 521.09 Certification.

(a) ~~In order to receive funding, r~~Residential services, combined residential and day services, or ~~self-directed~~ day services provided under He-M 521 shall be certified ~~annually by the division by the bureau.~~

~~(b) As part of the certification process, the area agency staff shall make a home visit and gather the information required by He-M 521.09 (e).~~

(b) To initiate the certification process, the area agency shall:

(1) Review the service arrangement and documentation to confirm that all applicable requirements identified in He-M 521.05 and He-M 521.06 are being met; and

(2) At least 30 days prior to the start of services, forward to the bureau:

a. The individual's service agreement and ~~proposed~~ budget; and

b. The area agency's recommendation for certification.

(c) To renew certification of services under He-M 521, the area agency shall:

(1) Review the service arrangement and documentation to confirm that all applicable requirements identified in He-M 521.05 through He-M 521.08 are being met; and

(2) At least 30 days prior to the expiration of the current services, forward to the bureau:

a. The ~~individual's~~ service agreement; and

b. The area agency's recommendation for recertification.

~~—— (c) For each certification request, the area agency staff shall forward to the division the following information:~~

- ~~(1) Name of the individual to receive services;~~
- ~~(2) Address of the home;~~
- ~~(3) Date of the area agency staff visit;~~
- ~~(4) Type of services to be provided, indicating whether residential services, combined residential and day services, or self directed day services;~~
- ~~(5) Whether financial reimbursement is to be made to family members as:
 - ~~a. Providers;~~
 - ~~b. Staff; or~~
 - ~~c. Sub-contractors;~~~~
- ~~(6) Whether:
 - ~~a. The services meet the certification requirements cited in He M 521.03 He M 521.08;~~
 - ~~b. Any corrective action was taken based on area agency recommendation; and~~
 - ~~c. Certification is recommended by the area agency based on its determination that the services comply with He M 521; and~~~~
- ~~(7) The name and signature of the area agency staff making the recommendation.~~

(d) Within 14 days of receiving the area agency recommendation pursuant to (b) or (c) above, the bureau shall issue a certification if the applicable requirements are being met.

(e) All certifications granted by the bureau under (d) above shall be effective for no more than 24 months.

(f) Upon request by the area agency, the bureau shall issue a 60-day emergency certification to enable an individual to relocate to a staffed or provider home if the area agency executive director, or his or her designee, submits to the bureau a signed statement documenting that the individual's safety has been addressed.

~~—— (d) The information identified in (c) above shall be submitted to the division at any time prior to either the projected initiation of the services or 30 days prior to expiration of the current certification.~~

~~— (e) Following consideration of the area agency's recommendation, the division shall:~~

~~(1) Grant certification if the division determines that the services comply with the requirements of He-M 521; or~~

~~(2) Deny certification if the division determines that the services do not comply with the requirements of He-M 521.~~

~~— (f) The division shall inform the area agency in writing of its certification determination within 30 days of receiving the area agency recommendation.~~

~~— (g) If services to an individual arranged pursuant to He-M 521 are being discontinued, the applicable area agency shall submit written notification of this change to the division within 30 days.~~

Readopt with amendment He-M 521.10 through He-M 521.11, effective 5/22/01 (document # 7494), to read as follows:

He-M 521.10 Denial and Revocation of Certification.

(a) In the event of the denial or revocation of certification of services pursuant to (c) below, the individual's service coordinator shall assist him or her to continue receiving alternative services that meet his or her needs.

(ab) The ~~division~~bureau shall deny an application for certification or revoke certification of services, following written notice pursuant to (d) below and opportunity for a hearing pursuant to He-C 200, due to:

(1) Failure of a staff, provider, subcontract agency, or area agency to comply with He-M 521 or any other applicable rule adopted by the department;

(2) Hiring of persons below the age of 18 as staff or providers;

(3) Submission of materially false or misleading information to the ~~division~~department or failure to provide information requested by the department and required pursuant to He-M 500;

(4) The staff, provider, subcontract agency, or area agency preventing or interfering with any review or investigation by the department;

(5) The staff, provider, subcontract agency, or area agency failing to provide required documents to the department;

~~(4)(6)~~ Any reported abuse, neglect, or exploitation of an individual by a provider, staff, or person living in ~~the individual's~~ a non-family provider's home, if:

a. Such abuse, neglect, or exploitation is founded based on a protective investigation performed by the department in accordance with He-E 700 and an administrative hearing held pursuant to He-C 200, if such a hearing is requested; ~~and~~

b. Such person(s) continues to have contact with the individual; and

c. Such finding has not been overturned on appeal, been annulled, or received a waiver pursuant to He-M 521.14;

~~(5)(7) Failure by a subcontract agency or area agency to perform criminal background checks on all persons paid to provide services under He-M 521 who begin to provide such services on or after the effective date of He-M 521 these rules;~~

~~(6) Misdemeanor conviction of any staff or provider involving physical or sexual assault, violence or exploitation, child pornography or threatening or reckless conduct, theft or any other conduct that represents evidence of behavior that could endanger the well-being of an individual;~~

(8) A misdemeanor conviction of any staff or provider or any person living in a non-family provider's home that involves:

a. Physical or sexual assault;

b. Violence or exploitation;

c. Child pornography;

d. Threatening or reckless conduct;

e. Theft;

f. Driving under the influence of drugs or alcohol; or

g. Any other conduct that represents evidence of behavior that could endanger the well-being of an individual;

~~(7) Felony conviction of any provider or staff; or~~

(9) A felony conviction of any staff or provider or any person living in a non-family provider's home; or

~~(8) Any condition or behavior of a provider, staff or family member that would endanger the well-being of an individual as evidenced by the documentation obtained and the observations made by the division.~~

(10) Evidence that any provider or staff working directly with individuals has an illness or behavior that, as evidenced by the documentation obtained and the observations made by the department, would endanger the well-being of the individuals or impair the ability of the provider or staff to comply with department rules, except in cases where such personnel have been reassigned and the well being of all individuals and the provider's or staff's ability to comply with these rules are no longer at risk.

~~(b) Revocation of certification or denial of application for certification shall be in accordance with the following:~~

~~(1) Upon determination that a certified service meets any of the criteria listed in (a) above, the director shall issue a notice of intent to revoke or deny the certification;~~

~~(2) Prior to revocation or denial of certification the director shall:~~

~~a. Provide 30 days' written notice to the provider or provider agency as applicable, with a copy to the area agency stating the specific rule(s) with which the service does not comply; and~~

~~b. Provide opportunity for an adjudicative proceeding pursuant to He-C 200, if requested by the provider or provider agency as applicable; and~~

~~(3) The director shall withdraw a notice of revocation or denial if, within the notice period, the provider or provider agency takes corrective action resulting in the elimination of the reason(s) for revocation or denial.~~

(c) If the department determines that services meet any of the criteria for denial or revocation listed in (b)(1)-(10) above, the department shall deny or revoke the certification of the services.

(d) Certification shall be denied or revoked upon the written notice by the department to the family and provider, subcontract agency, or area agency stating the specific rule(s) with which the service does not comply.

(e) Any certificate holder aggrieved by the denial or revocation of the certification may request an adjudicative proceeding in accordance with He-M 521.12 and the denial or revocation shall not become final until the period for requesting an adjudicative proceeding has expired or, if the certificate holder requests an adjudicative proceeding, until such time as the administrative appeals unit issues a decision upholding the department's action.

(f) Pending compliance with all requirements for certification specified in the written notice made pursuant to (d) above, a provider, subcontract agency, or area agency shall not provide additional services if a notice of revocation has been issued concerning a violation that presents potential danger to the health or safety of the individuals being served.

He-M 521.11 Immediate Suspension of Certification.

(a) In the event that a violation poses there is an immediate and serious threat to the health or safety of an individual, ~~the director~~ the bureau administrator shall suspend a service's certification immediately upon issuance of written notice specifying the reasons for the action.

(b) The bureau administrator or his or her designee shall schedule and hold a hearing within 10 working days of the suspension for the purpose of determining whether to revoke or reinstate the certification. The hearing shall provide opportunity for the provider, subcontract agency, or area agency whose certification has been suspended to demonstrate that it has been, or is, in compliance with the specified requirements.

~~(b) The suspension shall remain in effect until the earliest of the following:~~

~~(1) A hearing is held and a decision is rendered pursuant to (c) below;~~

~~(2) More than 10 working days from the date of the suspension have passed without the holding of a hearing pursuant to (c) below; or~~

~~(3) The director has determined that the service is in compliance with all applicable department rules and no longer poses an immediate and serious threat to an individual's health or safety.~~

~~(c) At the time that the director suspends the certification of a service, the director shall schedule a hearing to be held within 10 working days in accordance with He-C 204.~~

~~(d) A hearing held pursuant to (c) above shall determine:~~

~~(1) Whether in fact there was an immediate and serious threat to the health and safety of the individual at the time that the service's certification was suspended; and~~

~~(2) If applicable, whether the provider or provider agency has come into compliance with all relevant division rules and there is no longer an immediate and serious threat to the individual's health or safety.~~

Adopt He-M 521.12 to read as follows:

He-M 521.12 Appeals.

(a) Pursuant to He-M 202, an individual or guardian may choose to pursue informal resolution to resolve any disagreement with an area agency, or, within 30 business days of the area agency decision, she or he may choose to file a formal appeal. Any determination, action, or inaction by an area agency may be appealed by an individual or guardian.

(b) An applicant for certification, provider, subcontract agency, or area agency may request a hearing regarding a proposed revocation or denial of certification, except as provided in He-M 521.11 above.

(c) Appeals shall be submitted, in writing, to the bureau administrator in care of the department's office of client and legal services within 10 days following the date of the notification of denial or revocation of certification. An exception shall be that appeals may be filed verbally if the individual is unable to convey the appeal in writing.

(d) The bureau administrator shall immediately forward the appeal to the department's administrative appeals unit which shall assign a presiding officer to conduct a hearing or independent review, as provided in He-C 200. The burden shall be as provided by He-C 203.14.

(e) If a hearing is requested, the following actions shall occur:

(1) Services and payments shall be continued as a consequence of an appeal for a hearing until a decision has been made; and

(2) If the bureau's decision is upheld, funding shall cease 60 days from the date of the denial letter or 30 days from the hearing decision, whichever is later.

Adopt He-M 521.13 to read as follows:

He-M 521.13 Payment

(a) In order to receive funding under He-M 521, services shall be certified by the bureau in accordance with 521.09.

(b) Community-based care providers shall submit claims for covered community-based care services on form HCFA 837 to:

Professional Claims
EDS Corporation
P.O. Box 2001
Concord, NH 03302

(c) Payment for community-based care services shall only be made if prior authorization has been obtained from the bureau.

(d) Requests for prior authorization shall be made in writing to:

Bureau of Developmental Services
State Office Park South
105 Pleasant Street
Concord, NH 03301

(e) For those individuals whose net income exceeds the nursing facility cap as established in He-W 658.05, area agencies shall subtract the cost of care from the Medicaid billings for the individuals.

(f) In those situations where cost of care is subtracted from the Medicaid billings, the area agency shall recover the cost from individuals unless they qualify for medicaid for employed adults with disabilities (MEAD) pursuant to He-W 641.03.

(g) Payment for services shall not be available to any service provider who:

- (1) Is the parent of the individual under age 18;
- (2) Is a person under age 18 if the individual is 21 years or older; or
- (3) Is the spouse of an individual receiving services.

He M 521.12 ~~Waivers.~~

~~(a) An area agency may request a waiver of specific procedures outlined in this chapter, in writing, from the director.~~

~~(b) Each request for waiver pursuant to (a) above shall include:~~

- ~~(1) A specific reference to the section of the rule for which a waiver is being sought;~~
- ~~(2) A full explanation of why a waiver is necessary; and~~
- ~~(3) A full explanation of alternative provisions or procedures proposed by the area agency.~~

~~(c) No provision or procedure prescribed by statute shall be waived.~~

~~(d) In requesting a waiver regarding services to an individual, an area agency shall document the consent of the individual or his or her guardian to such request.~~

~~(e) The director shall approve a request for waiver upon determination that:~~

- ~~(1) Strict compliance with the provision or procedure sought to be waived is contraindicated by legitimate service considerations; and~~
- ~~(2) Either one of the following applies:~~
 - ~~a. The alternative provisions or procedures proposed by the area agency are at least equivalent to the specific provisions or procedures contained in the rule; or~~
 - ~~b. The alternative provisions or procedures proposed by the area agency are not equivalent to the provisions or procedures contained in the rule but are sufficient to ensure that the objective or intent of the relevant provisions of the rule will be accomplished.~~

~~(e) Upon receipt of approval of a waiver request, the area agency's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered essential compliance with the rule for which the waiver was sought.~~

~~(f) Waivers shall be granted in writing for a period which shall not exceed the shorter of either:~~

~~(1) A period of 5 years from the date the waiver was granted; or~~

~~(2) The period following the granting of the waiver during which services are continuously certified.~~

Readopt with amendment and renumber He-M 521.12, effective 5/22/01 (document #7494), as He-M 521.14 to read as follows:

He-M 521.14 Waivers.

(a) An area agency, subcontract agency, individual, representative, or provider may request a waiver of specific procedures outlined in He-M 521 using the form titled "NH bureau of developmental services waiver request." The area agency shall submit the request in writing to the bureau administrator.

(b) A completed waiver request form shall be signed by:

(1) The individual(s) or legal guardian(s) indicating agreement with the request; and

(2) The area agency's executive director or designee recommending approval of the waiver.

(c) A waiver request shall be submitted to:

Office of Client and Legal Services
Hugh J. Gallen State Office Park
105 Pleasant Street, Main Building
Concord, NH 03301

(d) No provision or procedure prescribed by statute shall be waived.

(e) The request for a waiver shall be granted by the commissioner or his or her designee within 30 days if the alternative proposed by the area agency, subcontract agency, individual, representative, or provider meets the objective or intent of the rule and it:

(1) Does not negatively impact the health or safety of the individual(s); and

(2) Does not affect the quality of services to individuals.

(f) The determination on the request for a waiver shall be made within 30 days of the receipt of the request.

(g) Upon receipt of approval of a waiver request, the area agency's, subcontract agency's, individual's, representative's, or provider's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which waiver was sought.

(h) Waivers shall be granted in writing for a specific duration not to exceed 5 years except as in (i) below.

(i) Any waiver shall end with the closure of the related program or service.

(j) An area agency, subcontract agency, individual, representative or provider may request a renewal of a waiver from the bureau. Such request shall be made at least 90 days prior to the expiration of a current waiver.

APPENDIX
IMPLEMENTED STATUTES

<u>Section:</u>	<u>Statute:</u>
He-M 521.01 - 521.14	RSA 171-A:4; 18; I and II